name and trademarks are not generally the property of the operating company. In Section 274(b)(6), relating to RHC electronic publishing activities, the 1996 Act clearly allows the joint use of the name and trademarks owned by RHC or another affiliate of the BOC, without any restrictions. Aside from other secondary reasons weighing heavily against it, APCC's suggested royalty fee would contradict Congress's recognition of the permissible joint use of names and trademarks.

Another requirement that would contradict the 1996 Act is AT&T's plea for annual, rather than biennial, Section 272 audits. In Section 272(d), Congress specifically provided for "a joint federal/state audit every 2 years conducted by an independent auditor." Congress did not say "at least" every 2 years. In contrast to the requirement of an annual compliance review of electronic publishing provided in Section 274(b)(8), it is obvious that Congress intended the less frequent burden of biennial audits in the case of Section 272 affiliates.[52] SBC concurs with recommendations to streamline the overlapping requirements of the Section 272 and Joint Cost audits.[53]

X. THE COMMISSION SHOULD NOT APPLY THE ACCOUNTING SAFEGUARDS DIRECTLY TO THE SECTION 272 AFFILIATE AND ITS TRANSACTIONS WITH ALL OTHER BOC AFFILIATES.

Some commenters attempt to blur the lines between two separate and distinct issues

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[52] In fact, contrary to the position taken by NARUC, "every 2 years" indicates that the first biennial audit would be conducted at the end of the first two years to review compliance during that biennial period. See NARUC, Appendix C, at 15.

[53] BellSouth at 39; PacTel at 31; USTA at 14.

presented in the NPRM: (1) application of accounting safeguards to a BOC and to transactions between a BOC and its Section 272 affiliate[54] and (2) application of accounting safeguards directly to the Section 272 affiliate and to transactions between the Section 272 affiliate and other affiliates of the BOC.[55] For example, AT&T states that "existing [affiliate transaction] rules could be extended to these new separated operations with a minimum of disruption."[56] While it is true that application of the affiliate transaction rules to transactions between a BOC and its Section 272 affiliate would not be disruptive in that it would merely add another affiliate to the existing affiliate transaction process, it is a wholly different matter to suggest application of these rules to the Section 272 affiliate and all of its transactions with all other affiliates. This suggested new set of accounting safeguards would be exceedingly complex, given that it would replicate the current LEC accounting safeguards at the Section 272 affiliate presumably for the purpose of preventing cross-subsidy at the expense of the Section 272 affiliate's retail long distance subscribers. The purpose of the accounting safeguards is to protect ratepayers of a LEC's regulated services, not to protect subscribers of a competitive, start-up long distance company.

AT&T and the other commenters that suggest directly applying Part 32 accounting rules, CAM rules and affiliate transaction rules directly to the Section 272 affiliate do not even attempt

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[54] NPRM, ¶89.

[55] Id. ¶¶68-69, 90.

[56] AT&T at 8. Cf. WorldCom at 29.

to justify their suggestions in terms of protection of the Section 272 affiliate's subscribers.[57] Since their suggested application of accounting safeguards are completely unnecessary for the protection of the BOC's regulated service ratepayers against cross-subsidy, such a duplication of the accounting safeguards to regulate a competitive affiliate's internal operations cannot be justified. The IXCs' arguments in favor of this redundant regulation are blatant attempts to bridle their potential competitors with unnecessary restraints to ensure their own continued success in the interLATA marketplace. Unbridled competition will provide all the protection needed by long distance subscribers of Section 272 affiliates and incumbent IXCs alike. Section 272 affiliates, like their competitors, must have the freedom to design their accounting systems and charts of accounts in a manner best suited to their business functions consistent with GAAP. GAAP provides all the uniformity and consistency necessary for all affiliates.

Reflecting the sum total of the substantive arguments for imposing this morass of unnecessary accounting regulation on a competitive Section 272 affiliate and each and every one of the Section 272 affiliate's transactions with every other affiliate, two IXCs claim that the expansion of regulation to competitive operations will facilitate overview and auditing of transactions between the BOC and the Section 272 affiliate now and in the future.[58] This is a

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[57] AT&T at ii, 9; WorldCom at 22-23 ("USOA . . . will enable a much more accurate tracking of the way the RBOCs provide their services to the public.").

[58] AT&T at 9; MCI at 18. One of the audit functions that MCI claims will be facilitated is a review of the effects of a future merger of the Section 272 affiliate and BOC operations after the sunset of the separate affiliate requirements. Speculation concerning remote future benefits is not a good reason for imposing presently unnecessary burdens. The Commission "should . . . focus on the here-and-now questions that are necessarily posed by the 1996 Act," WorldCom at

grossly insufficient reason to impose burdensome regulation on competitive affiliates. The inapplicability of Part 32 and other accounting safeguards to the internal books of other affiliates has never impaired the Commission's ability to audit affiliate transactions with the LECs.[59] There is simply no reason to impose detailed accounting requirements on a competitive, start-up interLATA carrier, especially when its peers are not subject to those requirements.[60]

Relative to the NPRM's suggestion that Section 254(k) might provide the necessary authority to apply Part 64 cost allocation rules to the Section 272 affiliate's regulated and nonregulated activities, several commenters point out that the purpose of Section 254(k) is limited to assuring that the incumbent LECs "universal services" will "bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."[61]

XI. PRICE CAP REGULATION AND COMPETITION RENDER THE ACCOUNTING SAFEGUARDS OBSOLETE.

Commenters fail to prove that accounting safeguards are necessary to prevent cross-subsidy at the expense of a LEC's regulated service ratepayers in view of competitive pressure, price cap regulation and similar forms of incentive regulation. In their comments, SBC and others demonstrated that accounting safeguards are redundant in today's regulatory and

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9, such as reduction of as much of the burden of regulation as possible.

[59] Besides, these IXCs arguments are irrational to the extent they seek detailed accounting and reporting of a Section 272 affiliate's transactions with numerous other affiliates for purposes of facilitating an audit of transactions between two entities: a BOC and its Section 272 affiliate.

[60] See SBC Reply Comments, CC Docket No. 96-21, FCC 96-59, filed on March 25, 1996, at 9-11.

[61] See, e.g., Bell Atlantic at 5; NYNEX at 31; USTA at 25.

competitive environment.[62] Several parties argue that a LEC's allocation of costs between regulated and nonregulated activities continues to enable LECs to cross-subsidize.[63] None of these parties can credibly show how a price cap LEC could raise its regulated service prices as a result of changes in cost allocations.[64] Given the status of regulation in both interstate and intrastate jurisdictions and the inevitable future path of regulatory reforms, these parties cannot substantiate their claims that regulation of cost allocation is essential to prevent cross-subsidy. [65]

Competition also accelerates the obsolescence of the accounting safeguards. The intent of Congress in 1996 Act was to rely on competition to replace outmoded forms of regulation in all

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[62] See, e.g., Ameritech at 4-8; Bell Atlantic at 3-7; BellSouth at 10-11, 13; NYNEX at 4-8; SBC at 7-9; USTA at 2-12.

[63] See, e.g. AT&T at 2; MCI at 4-5.

[64] For example, MCI states that the 1996 Act is "substantially increasing the ILECs incentive and opportunity to shift cost." MCI at 4. Also, Sprint states: "if the reallocation resulted in additional investment being allocated to the regulated service, such reallocation would effectively cross-subsidize the [nonregulated] service from which the carrier has withdrawn." Sprint at 15. Nothing in either MCI's or Sprint's discussions demonstrate, nor could these parties demonstrate, how the LEC could subsequently raise the price(s) of its regulated services to accomplish the alleged cross-subsidy.

[65] MCI incorrectly claims that rate-of-return regulation is the predominant form of regulation in the United States. MCI at 6. Nothing could be further from the truth. At last count, of the 49 states in which BOCs operate, 38 of them regulate using price regulation, freezes or moratoriums. Only 5 use traditional rate-of-return regulation and 6 have sharing plans. See also BellSouth at 10 ("BellSouth is subject to price cap regulation in all nine of its intrastate jurisdictions"); NYNEX at 8 ("NYNEX is subject to price or incentive regulation throughout most of its intrastate jurisdictions; and in its remaining jurisdictions such regulation is under active consideration by the State commission.").

telecommunications markets, including local exchange and access markets. Commenters[66] that allege that ILECs will possess significant market power in local exchange and access markets are flat wrong. In attempting incorrectly to convince the Commission to base its future regulation of LECs on the market conditions of the past,[67] these parties seek artificial regulatory advantages that are completely contrary to the open competitive environments envisioned in the 1996 Act.

Commissioner Andrew Barrett recognized in 1992 that the future for regulation of cost allocations was short-lived. He stated:

> Cost allocations will become increasingly difficult and meaningless in the future given the changes that are taking place, and so we are left to regulate services which the market is not only capable of regulating, but in fact is trying to regulate. . . . It's time to further streamline the process of regulation so it can cope with the new technologies and industry structure.[68]

Clearly, now is not the time to revert to more intensive forms of outmoded regulation of earnings, costs and arbitrary allocations of joint and common cost, despite the cries of AT&T,

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[66] See, e.g., MCI at 4, 12. The mandates of the 1996 Act and the Commission's implementation of the Act will ensure that MCI is wrong in characterizing the LEC as having the ability to recover costs from "captive" local exchange and exchange access customers. MCI at 5. AT&T falsely claims that "BOCs will continue to have a virtually limitless capacity to thwart competition in all telecommunications markets, both local and long distance." AT&T at 3.

[67] MCI bases its support for more restrictive cost allocation rules on the admittedly harmful incentives that previously existed under rate-of-return regulation. MCI at 6-10. MCI cites instances where cost allocations affected regulated prices during a period in history when the BOCs were under rate-of-return regulation. This is not the case today and cannot form the basis for accounting safeguards associated with the implementation of the 1996 Act. Despite MCI's bare claim to the contrary, MCI at 9, these incentives do not continue to exist.

[68] Commissioner Andrew C. Barrett, "Beyond Price Caps: Escaping the Traditional Regulatory Framework," presented August 27, 1992 to The Florida Economic Club, at 7.

MCI and a few others.[69] No doubt the IXCs would like nothing more than to hamstring their new competitors in advance of their entry into the interLATA marketplace. In contrast, SBC firmly believes that open competition in the market must be preferred over arbitrary cost allocations and other accounting regulations, which, despite the best efforts of regulators, cannot and should not replace the discipline of the marketplace.

If, despite the clear and convincing evidence to the contrary, the Commission decides to retain accounting safeguards as a redundant protection against cross-subsidy, the Commission should at least leave the accounting safeguards as they are.

XII. CONCLUSION.

Instead of adding regulatory baggage to the accounting safeguards that would forestall efficient RHC competition in new markets, the Commission should consider these rules in light of the status and direction of state and federal price regulation and the incentives of the competitive marketplace. As a method of preventing cross-subsidy, the accounting safeguards are rendered obsolete. To the extent these safeguards are retained as a redundant safeguard, they

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[69] A few commenters such as Sprint and MCI seek to have the Commission not only retain, but reinforce and misconstrue, the vestiges of rate-of-return regulation in the LEC price cap plan. MCI at 38-39; Sprint at 14-16. For instance, Sprint misconstrues the exogenous cost rule in Section 61.45 of the Commission's Rules to require a price cap adjustment whenever any investment is reallocated from regulated to nonregulated activities. SBC and other commenters herein and in CC Docket No. 96-112 conclusively demonstrate that this is a misinterpretation of Section 61.45 that would greatly expand this exogenous cost rule. See, e.g., Bell Atlantic at 10-11; NYNEX at 31-34; PacTel at 35-40; SBC at 40-50 & n.100 (citing comments in CC Docket No. 96-112); US West at 28. Such gerrymandering of the exogenous cost rule would be a particularly inappropriate and inconsistent return to cost-based regulation, given that any efficiency resulting from expanded investment will be factored into a price cap plan total productivity factor. SBC at 7-9.

should not be expanded or made more burdensome. In particular, the Commission should not allow IXCs to use these safeguards as an anticompetitive weapon and they should not force BOCs to discriminate against their Section 272 affiliates or otherwise violate the Act. The safeguards should not encourage inefficiency or waste, such as the extensive resources that would have to be devoted to the performance and administrative review of fair market value studies for services, especially in the case of services for which comparables do not exist, or are very hard to identify, in the marketplace. In such cases, fair market valuation is virtually impossible (i.e., pure guesswork) and prevailing price or FDC are much less restrictive, and vastly more reliable, alternatives. Simplicity, such as that of the prevailing price method, should be the criteria for preservation of any of the accounting safeguards. In the deliberations over the survival of the simplest, least burdensome methods reasonably necessary to accomplish the goal of preventing cross-subsidy, the Commission should consider carefully suggestions to streamline the accounting safeguards, such as those presented in USTA's Comments.

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CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing "Reply Comments of SBC Communications, Inc." in Docket No. 96-150, have been served this 10th day of September, 1996 to the Parties of Record.

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